

Small Business Regulatory Review Board

MINUTES OF REGULAR MEETING

July 20, 2011

Conference Room 410 - No. 1 Capitol District Building, Honolulu, Hawaii

CALL TO ORDER: Chair Pang called the meeting to order at 10:37 a.m. with a quorum present.

MEMBERS PRESENT:

- Charles Au
- Dorvin Leis
- Sharon Pang
- Roland Sagum III
- Richard Schnitzler
- Howard West
- Peter Yukimura

ABSENT MEMBER:

- Bruce Bucky
- David De Luz Jr.

STAFF:

DBEDT
Milton Kwock

Office of the Attorney General
Margaret Ahn

APPROVAL OF JUNE 23, 2011 MINUTES

Mr. Schnitzler made a motion to accept the June 23, 2011 minutes as circulated. Mr. Au seconded the motion and the Board members unanimously affirmed the motion.

OLD BUSINESS

A. Update on the status of nominees to fill vacancies from Maui to the Small Business Regulatory Review Board.

Chair Pang informed the board that former Chair Lynne Woods had identified a prospective candidate who was in the process of submitting her application online to the Governor's website.

B. Review and discussion of Chu Lan Shubert-Kwock's application to fill vacant board position.

Board members expressed their concern that new candidates were being submitted to the board for consideration when there was at least one nominee still up for Governor's consideration. The point was made that the Governor would make his selection from the nominees submitted by the board. Nominees not selected were not rejected but just not chosen.

Mr. Au offered a motion to have staff prepare a memo to the John Leong thanking him for interest in serving on the board. Governor Abercrombie appointed two new board members and the industry sectors Mr. Leong would represent have been filled by the two new members. Mr. Au also offered a second part to the motion recommending that staff prepare a memo notifying the Governor's Boards and Commissions Office that the board was submitting the nomination of Ms. Shubert-Kwock to fill a vacancy on the board representing

Oahu. Mr. Schnitzler seconded the motion and the board voted unanimously in favor of the motion.

C. Proposed adoption of new Chapter 18-231-91-01 through 18-231-100-01, HAR, “Cash Economy Enforcement,” which implements the Special Enforcement Section to investigate and enforce tax laws with an emphasis on the “cash economy.” (DoTAX)

Mark Yee, DoTAX Administrative Rules Specialist, and Steve Hironaka, Criminal Section Supervisor, briefed the board on the impact the proposed new rules would have on small business. They mentioned that the Department would reallocate its resources to handle the new rules, if adopted. The Special Enforcement Section staff identified over \$930,000 in unreported taxable revenue in the last fiscal year and generated \$8,000 in citations, most of which were dismissed.

Tax revenues generated by the program of up to \$500,000 would be kept in a special fund by the Department to fund the program, with the excess going back to the State’s General Fund.

Mr. Au offered a motion recommending that the Governor approve the department’s request to send the proposed new rules to public hearing. He also recommended that the department need not return to the board after public hearing unless substantive changes were made to the proposed amendments. Mr. Sagum seconded the motion and the board voted unanimously in favor of the motion.

D. Revised discussion leader assignments

Deferred.

NEW BUSINESS

A. Proposed adoption of new Chapter 17-1443, HAR, “State-Approved Feeding Assistant Training Program,” which establishes requirements for State-approved feeding assistant training program in nursing homes; 17-1444, HAR, “Nurse Aide Training and Competency Evaluation Program,” which establishes requirements for State-certified nurse aide training and competency evaluation programs; and 17-1445, HAR, “Recertification of Nurse Aides in State-Licensed or State-Certified Health Care Settings,” which establishes standards for certified nurse aides in State-licensed or State-certified health care settings who choose to be recertified or whose recertification is required by their employers. (DHS/SSD)

Linda Chun, DHS/Social Services Division Administrator and Lori Tsuruda, DHS/Adult & Community Care Services Branch Program Specialist, briefed the board on proposed rules which were originally under DHS/MedQuest Division, then transferred to the Social Services Division:

- 17-1443 applies only to nursing homes (nursing facilities). The industry stakeholders were consulted when drafting the new rules. The reality is that facilities hire CNAs rather than feeding assistants. There isn’t enough work to justify hiring a feeding assistant in a nursing home. While not really efficient, the training program could be used to train administrative, non-professional staff. A trained feeding assistant would be supervised by a CNA. Industry

representatives in attendance mentioned that they did not have any problem with this proposed new rule.

Mr. Schnitzler offered a motion recommending that the Governor approve the department's request to send the proposed new rules to public hearing. Mr. Sagum seconded the motion and the board voted unanimously in favor of the motion.

- 17-1444 standards and guidelines are set by the federal government and packaged into rules format. There are schools that offer this 100 hour training program. DHS consulted with the schools, community colleges and the small business community for their feedback. There are currently 27 training sites statewide.

Mr. West offered a motion recommending that the Governor approve the department's request to send the proposed amendments to public hearing. Mr. Au seconded the motion and the board voted unanimously in favor of the motion.

- 17-1445 is a new rule. State Representative John Mizuno (in attendance) wrote the original bill that triggered these rules. The Department followed the legislative intent of the bill, balancing healthcare and consumer protection while trying to keep the language of the bill simple and understandable.

After three years without rules, Rep. Mizuno submitted draft rules for the Department's consideration in April 2010. Staff commented that they received a copy of the draft rules at the SBRRB meeting. Chair Pang asked if the Department engaged stakeholders for their feedback on the draft rules. Staff responded that they actively engaged industry stakeholders and have kept rosters of attendees to their outreach meetings. Department also felt that the public would have an additional opportunity to express their views at the public hearings. Mr. Au suggested that the Department send the Ramseyer version of the draft rules to Rep. Mizuno.

Mr. Sagum offered a motion recommending that the Department engage a broader population of stakeholders to get their feedback prior to coming back to the board to request approval to send the proposed new rules to public hearing. The point of contact for the stakeholders would be Rep. Mizuno since he introduced the bill that triggered the proposed new rules. Mr. Schnitzler seconded the motion and the board voted unanimously in favor of the motion.

B. Proposed amendments to Chapter 15-320, HAR, "Low Income Housing Tax Credit Loan Program" which establishes a zero-interest loan program for the development of affordable rental housing projects that were awarded Federal and State Low-Income Housing Tax Credits. (DBEDT/HHFDC)

Darin Ueki, HHFDC Finance Manager briefed the board on the proposed new rules (note correction). The intent of the loan program is to keep housing projects affordable for at least 30 years. While there are federal and state tax credits, the state tax credits are 50% of the federal tax credits. In his opinion, low income housing projects would not be able to survive using only conventional debt.

Mr. Sagum offered a motion recommending that the Governor approve the department's request to send the proposed new rules to public hearing. Mr. Schnitzler seconded the motion and the board voted unanimously in favor of the motion.

C. Proposed amendments to Chapter 12-46, Subchapter 9, HAR, "Disability Discrimination," which amends the rules to minimally conform to the Americans With Disabilities Act Amendments Act. (DLIR/Civil Rights Commission)

Livia Wang, Acting Chief Counsel, briefed the board on the proposed amendments. The 2010 Legislature directed the Civil Rights Commission to have State conform to federal laws. Employers with 15 or more employees are covered under federal law, state laws cover employers with one or more employees.

Mr. West offered a motion recommending that the Governor approve the department's request to send the proposed amendments to public hearing. He also recommended that the Department need not return to the Board after public hearing unless substantive changes were made to the proposed amendments. Mr. Sagum seconded the motion and the board voted unanimously in favor of the motion.

D. Proposed amendments to Chapter 11-65, HAR, "Environmental State Revolving Loan Funds," which revises the loan fee structure of the federally funded Drinking Water Treatment Revolving Loan Fund to remain competitive with other debt instruments currently utilized by its four County loan recipients, and thus ensuring the loan fund's existence in perpetuity, as required under HRS 340E-35. (DOH/Safe Drinking Water Branch)

Michael Miyahira, DOH/Safe Drinking Water Branch Engineering Section Supervisor, briefed the board on the proposed amendments. The proposed amendments will bring the State in compliance with the Federal Safe Drinking Water Act and will have an indirect positive impact on small businesses. The proposed amendments will help the counties with lower cost money to fund infrastructure improvements which in turn should translate to lower water rates for the community.

Mr. West offered a motion recommending that the Governor approve the department's request to send the proposed amendments to public hearing. He also recommended that the Department need not return to the board after public hearing unless substantive changes were made to the proposed amendments. Mr. Sagum seconded the motion and the board voted unanimously in favor of the motion.

E. Proposed adoption of new rules governing legal practice and procedure for hearings conducted by a hearings officer appointed under the authority of the County Engineer of the County of Kaua'i. (Kauai County/Department of Public Works)

Mauna Kea Trask, Deputy County Attorney, briefed the board on the proposed new rules. The County was finally getting around to creating and updating their rules packages.

Mr. Yukimura offered a motion recommending that the Governor approve the department's request to send the proposed amendments to public hearing. He also recommended that the Department need not return to the board after public hearing unless substantive changes

were made to the proposed amendments. Mr. Sagum seconded the motion and the board voted unanimously in favor of the motion.

F. Proposed adoption of new rules and regulations relating to the use of parks and park facilities by commercial peddlers and concessionaires in the County of Kaua`i. (Kauai County/Department of Parks & Recreation)

Lenny Rapozo, County of Kauai Department of Parks & Recreation Director, and Mauna Kea Trask, Deputy County Attorney, briefed the board on the proposed new rules. The county conducted outreach meetings in the community before requesting permission to go to public hearings. The rules are modeled after the City & County of Honolulu and does not allow peddlers to do business without county approval. Mr. West suggested that the Department standardize the public participation process and suggested that the proposed rules include more detail .

Mr. Sagum offered a motion recommending that the Governor approve the department's request to send the proposed amendments to public hearing. He also recommended that the Department need not return to the board after public hearing unless substantive changes were made to the proposed amendments. Mr. Yukimura seconded the motion and the board voted unanimously in favor of the motion.

G. Proposed amendments to Special Management Area Rules and Regulations with regard to the definition of "development" and the valuation threshold for SMA Minor Permits as a result of Act 173. Proposed amendments also provide the Planning Commission the opportunity to codify previous amendments and revise procedural requirements in accordance with the County of Kaua`i's Comprehensive Zoning Ordinance. (Kaua`i County/Planning Commission.

Ian Jung, Deputy County Attorney, briefed the board on the proposed amendments to the Special Management Area (SMA) Rules and Regulations. The proposed amendments will increase the SMA threshold amount from \$125,000 to \$500,000. The amendments will also fully codify the SMA rules.

Mr. Yukimura offered a motion recommending that the Governor approve the department's request to send the proposed amendments to public hearing. He also recommended that the Department need not return to the board after public hearing unless substantive changes were made to the proposed amendments. Mr. Sagum seconded the motion and the board voted unanimously in favor of the motion.

H. Proposed amendments to Chapter 16-71, HAR, "Relating to Certified Public Accountants and Public Accountants," which allow the Board of Public Accountancy to accept experience in private or government accounting or auditing work that is deemed to be equivalent to professional experience in public accountancy practice, so long as the work is supervised by a licensed Certified Public Accountant (or equivalent in another jurisdiction). (DCCA/PVL)

Lauren Kai, DCCA/Executive Officer, Board of Public Accountancy, briefed the board on the proposed amendments. She commented that the Board of Public Accountancy determines if "experience" equates to public accounting experience. Mr. Au commented that 80 hours of continuing education and "experience" would allow someone to practice public accounting

without any public accounting experience. Even with that in mind, the proposed amendments may positively affect between 7-10% of the professional accountants and is good for small business.

Mr. Au offered a motion recommending that the Governor approve the department's request to send the proposed amendments to public hearing. He also recommended that the Department need not return to the board after public hearing unless substantive changes were made to the proposed amendments. Mr. Sagum seconded the motion and the board voted unanimously in favor of the motion.

I. Proposed adoption of new Chapter 6-83, HAR, "Hawaii One Call Center Subsurface Installation Damage Prevention Program," which describes the responsibilities of excavators, underground facility operators, the Hawaii One Call Center system and the Commission. (PUC)

Joshua Strickler, Chief of Research, Public Utilities Commission, brief the board on the proposed new rules which will help to protect excavators. Homeowners doing their own excavation would not be affected. The program focuses on safety and is a free service to excavators. A 17 member advisory committee oversees the program and fees assessed impact mostly large businesses. Mr. West commented that the Center has a positive impact on business but the rules are shorter than the law and should be fleshed out including the addition of definitions.

Mr. West offered a motion recommending that the Governor approve the department's request to send the proposed amendments to public hearing. He also recommended that the Department need not return to the Board after public hearing unless substantive changes were made to the proposed amendments. Mr. Yukimura seconded the motion and the board voted unanimously in favor of the motion.

REPORT FROM CHAIR

A. Proposed amendments to Chapter 8-54, HAR, "Teacher Licensing Standards." (DOE)

No small business impact.

B. Small Business Regulatory Review Board PowerPoint presentation.

Deferred.

REPORT FROM BOARD MEMBERS - None

NEXT MEETING – Scheduled for Wednesday, August 17, 2011, 250 South Hotel Street, Honolulu, HI, Room 410.

ADJOURNMENT – The meeting adjourned at 2:10 pm.